

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CALCUTTA BENCH, CALCUTTA

O. A. No. 350/01693 of 2016

IN THE MATTER OF: MA. 337/2017
MA. 674/2017
CPC. 75/2016

1. **TUSHAR KANTI BARMAN**, aged about 38 years, son of Sri Sarat Chandra Barman, residing at Bankim Sarani Bye Lane, 6, South Deshbandhu Para, Siliguri Pin-734004 and working to the post of Field Investigator under control and authority of Director, National Sample Survey Office (Field Operations Division) West Bengal, North Region under the Government of India, Ministry of Statistics & Programme Implementation.
2. **BIPLAB DEB ADHIKARY**, son of Shri Amal Deb Adhikary, residing at Village Ashari, Post Office- Chaklahana, Police Station- Debra, District- Paschim Medinipur, Pin- 721126 and working to the post of Field Investigator under control and authority of Director, National Sample

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Survey Office (Field Operation Division),
West Bengal (West Region) under the
Government of India, Ministry of Statistics
& Programme Implementation.

3. **SHIULI SAHA**, daughter of Shri Ashok Kumar Saha, residing at Village, Post Office and Police Station- Kulpi, District 24-Parganas (South), Pin- 743351 and working to the post of Field Investigator under control and authority of Deputy Director General, National Sample Survey Office (Field Operation Division), West Bengal (South Region) under the Government of India, Ministry of Statistics & Programme Implementation.
4. **SUSOVAN DEBNATH**, son of Late Nepal Debnath, residing at 7/H/4, Rani Branch Road, Post Office- Cossipore, Police Station- Chitpur, Kolkata- 700002 and working to the post of Field Investigator under control and authority of Deputy Director General, National Sample Survey Office (Field Operation Division), Regional

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Office of West Bengal (South Region)
under the Government of India, Ministry of
Statistics & Programme Implementation.

5. **PALASH MANDAL**, son of Shri Subhendu Sekhar Mandal, residing at Village and Post Office- Debipur, Police Station- Maipith Coastal, District- South 24-Parganas, Pin- 743383 and working to the post of Field Investigator under control and authority of Director, National Sample Survey Office (Field Operations Division), West Bengal (South Region) under the Government of India, Ministry of Statistics & Programme Implementation.
6. **MRIGANKA MAULI ACHARYA**, son of Shri Mrityunjay Acharya, residing at C/o. N.C. Mukherjee, B.G. Nanda Road, Shyambazar, Post Office- Rajbati, District- Burdwan, Pin- 713104 and working to the post of Field Investigator under control and authority of Director, National Sample Survey Office (Field Operation Division), Regional Office of West Bengal (West Region) under the Government of India,

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Ministry of Statistics & Programme
Implementation.

7. **INDRAJIT KAR**, son of Shri Joydeb Kar, residing at Village and Post Office- Salboni, District- Paschim Medinipur, Pin- 721147 and working to the post of Field Investigator under control and authority of Director, National Sample Survey Office (Field Operation Division), West Bengal (West Region) under the Government of India, Ministry of Statistics & Programme Implementation.
8. **BHAGYADHAR DHARA**, son of Shri Pirupada Dhara, residing at Village- Uchitpur, Post Office- Sanktia, Police Station- Raina, District- Burdwan, Pin- 713408 and working to the post of Field Investigator under control and authority of Director, National Sample Survey Office (Field Operation Division), West Bengal (West Region) under the Government of

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India, Ministry of Statistics & Programme Implementation.

9. **SK. KUTUBUDDIN**, son of Sk. Abul Basar, residing at Village- Chaltapur, Post Office- Khanakul, District- Hooghly, Pin- 712406 and working to the post of Field Investigator under control and authority of Director, National Sample Survey Office (Field Operation Division), West Bengal (West Region) under the Government of India, Ministry of Statistics & Programme Implementation.

10. **SAJAL KUMAR BANIK**, son of Late Sachinandan Banik, residing at Village- Ranjanpally, Post Office- Chakdah, District- Nadia, Pin-741222 and working to the post of Field Investigator under control and authority of Director National Sample Survey Office (Field Operations Division), West Bengal, (West Region) under the Government of India, Ministry of Statistics & Programme Implementation.

....Applicants

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-Versus-

1. **UNION OF INDIA**, service through **THE SECRETARY** , Government of India, Ministry of Statistics & Programme Implementation, Govt. of India, Room No., 418, Sardar Patel Bhavan, Sansad Marg, New Delhi- 110001.

2. **THE DIRECTOR GENERAL AND CHIEF EXECUTIVE OFFICER**, Ministry of Statistics & Programme Implementation, National Sample Survey Office, Sardar Patel Bhavan, Sansad Marg, New Delhi- 110001

3. **ADDITIONAL DIRECTOR GENERAL**, Ministry of Statistics & Programme Implementation, National Sample Survey Office (Field Operations Division), Head Quarter, East Block – 6, Level : 4 to 7, R. K. Puram, New Delhi - 110066

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4. THE DEPUTY DIRECTOR GENERAL,

(Eastern Zone), National Sample Survey

Office (Field Operation Division),

Mahalanobis Bhawan, 6th Floor, 164,

Gopal Lal Tagore Road, Kolkata- 700108.

...Respondents.

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CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

No. O.A. 350/01693/2016
M.A. 350/00337/2017
M.A. 350/00674/2017
C.P.C. 350/00075/2016

Reserved on: 27.1.2020
Date of order: 21.02.2020

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

TUSHAR KANTI BARMAN & ORS.

VS.

UNION OF INDIA & ORS. (NSSO)

For the Applicant : Mr. P.C. Das, Counsel
Ms. T. Maity, Counsel

For the Respondents : Mr. B.B. Chatterjee, Counsel

ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

The applicants have approached this Tribunal in third stage litigation under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:-

- "(a) Leave may be granted to the applicants to file this application jointly under Rule 4(5)(a) of the Central Administrative Tribunal (Procedure) Rules, 1987 as the applicants have a common grievance.
- (b) To quash and/or set aside the impugned notification for inviting tender dated 04.11.2016 by which the respondent authority are going to hand over the present applicants' contractual appointment to the private agencies which is absolutely arbitrary and illegal being Annexure A-3 of this original application;
- (c) To pass an appropriate order directing upon the respondent authority to consider the prayer made by the applicant for giving regular pay scale vide their representations dated 31st October, 2016 in the light of the decision passed by the Hon'ble Supreme Court in the case of State of Punjab & ors. vs. Jagjit Singh & ors. in Civil Appeal No. 213 of 2013;
- (d) To declare that the proposal made by the Ministry to handover the service conditions and to control the service pre-conditions of the applicants by the private agencies by violating their own decision as well as the decision of the Hon'ble Supreme Court as well as for bypassing the decision of this Hon'ble Tribunal, where the Hon'ble Tribunal held that the applicants will be continuing in their services to the post of Field

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Investigator till the new incumbents joined through Staff Selection Commission is otherwise bad in law and illegal."

2. As prayed for, leave is granted to the applicants for joint prosecution of this O.A. on the grounds of common interest and commonality of cause of action under Rule 4(5)(a) of Central Administrative Tribunal (Procedure) Rules, 1987.

3. Heard rival contentions of both Ld. Counsel, examined pleadings, documents on record as well as judicial pronouncements cited in support by both parties. Ld. Counsel for the applicant would submit a memo enclosing documents and judicial pronouncements. Written notes of arguments have been furnished by Ld. Counsel for the respondents.

4. The facts in, brief, are as follows:-

The applicants in the present application were initially engaged on contractual basis to the post of Field Investigator 2003 onwards and were reengaged upto the 73rd round. Upon their disengagement dated 8.7.2014, they had earlier approached this Tribunal in O.A. 1063 of 2014 (**Tushar Kanti Barman -vs.- Union of India & ors.**) in first round litigation, and, vide orders of this Tribunal dated 25.8.2015, all the applicants were reengaged to the post of Field Investigator on contractual basis.

The applicants approached this Tribunal in second stage litigation in O.A. No. 984 of 2016 (**Tushar Kanti Barman v. Union of India & ors.**) challenging notification dated 8.3.2014 and that of June, 2014 respectively and the Tribunal disposed of the said O.A. vide orders dated

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13.7.2016, directing respondents to engage the applicants in 74th round of NSS subject to outcome of Writ Petition No. 207385/15. This Tribunal, while disposing of the said O.A., also added that the respondents should make endeavours to create regular jobs upon notification of appropriate recruitment rules instead of engaging contractual Field Investigators in batches. In compliance, the applicants were once again engaged in the posts of Field Investigator vide orders dated 3.8.2015 and were continuing in such posts till the disengagement upon the completion of the 74th round.



The respondent authorities, vide their notification dated 4.11.2016, issued a tender notice inviting e-bids from private agencies for supply of manpower on contractual basis in contemplation of outsourcing contractual engagements.

As the applicants were working for more than 8 years, purportedly rendering similar services as regular employees of the department, they has been agitating for regular pay scale and had represented to the authorities to grant them the benefits as per the ratio in Civil Appeal No. 213 of 2013 in the case of **State of Punjab & ors. v. Jagjit Singh & ors.** Being aggrieved at not having received any favourable response to their prayer for such pay scales and also being apprehensive of engagement of an external agency to take over their services, the applicants have approached this Tribunal in the instant O.A. praying for aforementioned relief.

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The applicants have advanced the following grounds, inter alia, in support of their claim:-

- (i) That, all the applicants had been appointed since 2003 onwards on contractual basis. Hence, they had been agitating for regular pay scale considering their long tenure as contractual workers and, particularly, being supported by the ratio in **Jagjit Singh (supra)**.
- (ii) Engaging a private agency and in handing over the process of engagement of Field Investigators to such agencies clearly bypasses the decision of the Hon'ble Apex Court as well as the Tribunal that the present applicants would continue in the post of Field Investigator until regular incumbents join such posts.
- (iii) That, the notification dated 4.11.2016 calling for e-tenders from agencies violates the earlier decision of the Ministry of 2013 whereby earlier decisions of the Ministry to outsource contractual engagements was withdrawn.

5. Per contra, the respondent authorities would argue as follows:-

- (i) That the National Sample Survey Office (Field Operation Division), under the Ministry of Statistics and Programme Implementation, is entrusted with the responsibility of carrying out field work for various surveys in a time bound manner.

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(ii) Data is collected by Jr. Statistical Officer (JSO)s recruited through the Staff Selection Commission. Due to non-receipt of requisite number of dossiers from SSC, and, in view of the high attrition rate in the cadre of Junior Statistical Officer, promotion and other work exigencies, sufficient number of JSOs are always not available to conduct such surveys. Consequently, purely as a stop gap arrangement, Field Investigators have been engaged on contractual basis against the temporary vacancies in the cadre of JSO, for ensuring timely completion of data collection work.



(iii) Engagement of the Field Investigators are purely on contractual basis for a specified period on a consolidated remuneration. Terms and conditions of such engagement are clearly specified in the contract. In such offers of engagement, it is mentioned that the services rendered on contractual basis will not bestow any claim for regularization or further continuation, and, that, the same will come to an end on the expiry of the contractual tenure.

(iv) In 2017, the provisions of General Financial Rules (GFR) were amended to introduce, inter alia, Rule 198 whereby all Ministries and Departments were mandated to procure certain non-consultancy services in the interest of economy and efficiency. Detailed instructions were provided thereupon. In

compliance to the same, the respondent authorities initiated steps to float an e-tender for outsourcing of engagement of contractual manpower including that of Field Investigators for the PLFS Survey.

(v) That, the tenure of engagement of the applicants have come to an end with the efflux of time as their agreement with the respondent authorities have come to an end.

(vi) That, although the applicants have been praying for regular pay scale in the light of **Jagjit Singh (supra)** the decision of the Hon'ble Supreme Court in **Jagjit Singh (supra)** appears to be not in rem but in personem and as a result cannot be made directly applicable to the applicants unless they are squarely covered by the judgment.

(vii) That, most of the field Investigation are presently being conducted by regularly appointed JSOs. The engagement of Field Investigators are being continued on a periodic and limited basis as and when required and would gradually come to an end when all the vacancies in the post of JSO are filled up.

6. The two primary issues which are to be adjudicated in this matter upon are as follows:-

(i) Whether the e-tender notification for engagement of an agency to hire manpower for the service deserves to be quashed with the consequent impact of restraining the respondent

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authorities from handing over the services of contractual engagement to such agencies.

(ii) Whether the applicants, given their tenure since 2003 are entitled to the pay scale as prayed for in the light of the ratio in

Jagjit Singh (supra).

7.1. At the outset, we examine the relevant provisions guiding the notice vide which the respondent authorities had floated the e-tender dated 4.11.2016 (Annexure A-3 to the O.A.). The relevant extracts of such notice is extracted as below:-



No. M-12011/13/PLFS/MS-2016
Government of India
Ministry of Statistics and Programme Implementation
National Sample Survey Office
(Field Operations Division)

East Block-6, Level- 4 to 7,
R. K. Puram, New Delhi-110066

e- NOTICE INVITING TENDER

On behalf of President of India E- Tenders are invited through Central Public Procurement Portal www.eprocure.gov.in in 'Two-bid' system with technical and Financial bids separately from experienced and financially sound Manpower Supplying Agencies, engaged to provide services to National Sample Survey Office (NSSO) under Ministry of Statistics and Programme Implementation, Government of India on purely contract basis for Periodic Labour Force Survey (PLFS) conducted on an all India basis to generate the annual estimates of different Labour force both in rural and urban areas. The survey is proposed to commence w.e.f. 1st January, 2017 across the country. The tentative requirement of manpower, under different categories, is:

Field Investigators (FIs): 612, (2) Field Officers (FOs) : 45, (3) Administrative Staff : 58,

The field work of the survey will be operated from Regional/Sub-Regional offices of NSSO across the country. The list of offices where contractual Personnel are required for each category Personnel and Administrative Staff may be seen at ANNEXURE - I & II respectively on Ministry's website at www.mospi.gov.in as well as www.eprocure.gov.in. Interested agencies capable of providing required personnel may submit their tenders complete in all respect along with supporting documents in respect of their proven experience in supply of personnel to Government / Semi-Government / Public limited company.

The contract with the Agency found suitable will initially be for a period of one year from the date of work order and extendable maximum up to 5 (five) years subject to the satisfactory completion of the work at the same rate. The requirement of manpower may increase or decrease during the period of contract depending upon the need of the Survey.

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Selected agency will have to provide manpower under different categories as per the duties, age, eligibility/essential qualifications, desirable qualification and work experience required for Field Investigators/Field officers/Administrative Staff and the deployed manpower under these categories would be paid monthly remuneration by the agency as indicated in TABLE - A and TABLE - B respectively, while Travel Allowances/Daily Allowances would be paid by NSSO to the deployed manpower as prescribed in Table-B.

TABLE - A

Sl. No. of the	Duties	Age Limit	Eligibility/Essential qualification	Desirable qualification/ Experience
(1)	(2)	(3)	(4)	(5)
1	Field job of collection of data from households/enterprises using electronic gadgets through Computer-Assisted Personal Interviewing (CAPI) on various aspects in selected rural/urban samples through pre-designed schedules of inquiry.	Not exceeding 30 years as on 1 st October 2016. However, the upper age limit is relaxable by number of years served in NSSO Surveys as contractual investigator	(a) Bachelor's Degree from a recognized university with Statistics/Economics/Mathematics as one of the papers at Degree level or Or Bachelor's degree in any subject with 60% marks in Mathematics at 12 th standard level. And (b) Knowledge of English and Local language (c) Knowledge of Computer applications like MS office etc. alongwith comfort in keying data through hand held devices.	Preference will be given to candidates having experience of field job of statistical surveys carried under Government Sector/PSU.



We are given to understand by the respondent authorities that such e-tender was resorted to to comply with Rule 198 of GFR, 2017.

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The provisions of GFR, Rule 198 in particular, and detailed procedures thereof have been noted as follows:-

GENERAL FINANCIAL RULES 2017
Ministry of Finance
Department of Expenditure



capable contractors and issue limited tender enquiry to them asking for their offers by a specified date and time etc. as per standard practice. The number of the contractors so identified for issuing limited tender enquiry should be more than three.

- (ii) For estimated value of the non-consulting service above Rs.10 lakhs: The Ministry or Department should issue advertisement in such case should be given on Central Public Procurement Portal (CPPP) at www.eprocure.gov.in and on GeM. An organisation having its own website should also publish all its advertised tender enquiries on the website. The advertisements for invitation of tenders should give the complete web address from where the bidding documents can be downloaded.

Rule 198 Procurement of Non-consulting Services.

A Ministry or Department may procure certain non-consulting services in the interest of economy and efficiency and it may prescribe detailed instructions and procedures for this purpose without, however, contravening the following basic guidelines.

Rule 199 Identification of likely contractors.

The Ministry or Department should prepare a list of likely and potential contractors on the basis of formal or informal enquiries from other Ministries or Departments and Organisations involved in similar activities, scrutiny of 'Yellow pages', and trade journals, if available, web site etc.

Rule 200 Preparation of Tender enquiry.

Ministry or Department should prepare a tender enquiry containing, inter alia:

- The details of the work or service to be performed by the contractor;
- The facilities and the inputs which will be provided to the contractor by the Ministry or Department;
- Eligibility and qualification criteria to be met by the contractor for performing the required work/service; and
- The statutory and contractual obligations to be complied with by the contractor.

Rule 201 Invitation of Bids.

- For estimated value of the non-consulting service up to Rupees ten lakhs or less: The Ministry or Department should scrutinise the preliminary list of likely contractors as identified as per Rule 199 above, decide the prima facie Eligible and

Rule 202 Late Bids. Late bids i.e. bids received after the specified date and time of receipt should not be considered.

Rule 203 Evaluation of Bids Received.

The Ministry or Department should evaluate, segregate, rank the responsive bids and select the successful bidder for placement of the contract.

Rule 204 Procurement of Non-consulting services by nomination. Should it become necessary, in an exceptional situation to procure a non-consulting service from a specifically chosen contractor, the Competent Authority in the Ministry or Department may do so in consultation with the Financial Adviser. In such cases the detailed justification, the circumstances leading to such procurement by choice and the special interest or purpose it shall serve, shall form an integral part of the proposal.

Rule 205 Monitoring the Contract. The Ministry or Department should be involved throughout in the conduct of the contract and continuously monitor the performance of the contractor.

Rule 206 Any circumstances which are not covered in Rule 198 to Rule 205 for procurement of non-consulting services, the procuring entity may refer Rule 135 to Rule 176 pertaining to procurement of goods and not to the procurement of consulting services.

The respondents are, hence, mandated to procure certain non-consultancy services by identifying likely contractors through investigation of bids. It is not in dispute that procurement of contractual manpower is a non-consultancy service.

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Hence, the respondent authorities were duty bound to float tenders for engagement of agencies in hiring such manpower. It is also noted here that as the expenditure would be made from the central exchequer, the provisions of GFR, 2017 would be binding on the respondent authorities. Accordingly, we do not find any reason to intervene in the Memorandum of Agreement made between the respondent authorities dated 14th day of July, 2017 with the service provider. It has not been brought to our notice that the provisions of Rule 198 of GFR 2017 or such e-tender notice was stayed, quashed or cancelled in any judicial fora. Hence, we are of the considered view that such e-tender notice dated 4.11.2016 is not liable to judicial intervention.

Such tender, however, would be subject to the actual date of implementation of such bids. Admittedly, respondents chose to continue Field Investigators on need basis, without recourse to outsourced agency in the 75th round as per internal note sheet page 35 of respondents' file No. 12026/1/2017-E-II (annexed in their submission dated 15th November, 2017) as follows:-

"2. It was clarified by the Ministry that while selecting the agency E-Centric for PLFS survey, all prescribed procedures were followed as per existing GFR and the contract for supplying manpower was granted to the agency with due approval of Department of Law and administrative approval of the MOSPI and concurrence of IFD in September 2016. It is worth mentioning that GFR 2017 has come into effect from 8th March, 2017. Hence, sufficient time was not available to complete the codal formalities as per GFR, 2017.

3. As per the provision of GFR 2017, no agency for supplying manpower for this kind of survey is available on GEM portal on pan India basis. In this situation, engagement of contractual staff through the open bidding process as suggested by IFD is likely to take another at least 3 months and as very little time is left to start 75th round NSS survey which is going to start from 1st July 2017.

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4. Keeping in view of the paucity of time and functional requirement of NSS survey as mentioned above I, as Chief Accounting Authority, overrule the AS & FA and approve the proposal at para 7 on page 28/N ante.
5. Hon'ble Ministry may kindly see for information.

-Sd-
(T.C.A. Anant)
Secretary &
Chief Accounting Authority
19.6.2017"

7.2. Upon perusal of the e-tender, we find that the duties, age limit, eligibility/essential qualification as well as desirable qualifications/experience of the Field Investigators has been laid down in the procurement agreement. We would particularly, note item 5 of Table A (supra) which states that "preference will be given to candidates having experience of field job of statistical service carried under Government sector/PSUs."

The respondents would furnish, on direction, the agreement executed by the applicants with the authorities (page 9 of respondents reply dated 15.11.2017). Relevant extracts therefrom w.r.t. Applicant No. 1 is reproduced as below:-

Annexure-I

Government of India
Ministry of Statistics and Programme Implementation
National Sample Survey Office
(Field Operations Divisions)

Regional Office,
2/3, N.S. Road, Malda
Dated: 11/06/2011

Agreement for Engagement of Field Investigators on Contract Basis for
Surveys of NSSO

AN AGREEMENT made on 11th day of June Two Thousand and Eleven between the President of India acting through Satyajit Paul, Director (name and designation), Government of India, Ministry of Statistics and Programme Implementation, National Sample Survey Office (Field Operations Division) Regional Office, 1/3, N.s. Road, Malda, (address to be given) (hereinafter to be referred to as "First Party", which expression shall include his successors and

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assignees) on the one part and Shri Tushar Kanti Barman, Desh Bandhu Para, Siliguri, Darjeeling (Name and address to be given) (hereinafter to be referred to as "Second Party") on the other part.

WHEREAS the Second Party has applied for and has agreed to work as a Field Investigator in National Sample Survey Office (Field Operations Division) Regional Office Malda on contract basis.

AND WHEREAS, the First Party has agreed to engage the Second Party on contract basis as Field Investigator on the terms and conditions specified hereunder and the Second Party agreed to enter into this and have also agreed to abide by the terms and conditions of this agreement specified.

Now this agreement witnesseth and the parties hereto and hereby agree as follows:-

1. The Second Party shall render services of a Field Investigator on contract basis to the First Party for a period from 11.6.11 to 31.3.2012 as per requirements (hereinafter called 'contract period') subject to the provisions herein contained.
2. The engagement of the Second Party is purely on short term contract basis for the various Surveys of NSSO and Second Party would not be entitled to any claims, rights, interests or further benefits in terms of regularization or consideration of further appointment to any post, including any claims for any casual, ad-hoc, temporary or regular service in the Government.



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IN WITNESS WHEREOF the parties hereto and hereby put their hands the day, month and year first above written.

Signed by Shri Tushar Kanti Barman. Second Party in the presence of.

Signature
Name & Address
Dated 11.6.2011
C/o
Arun Chakraborty
Basudeb Apartment,
D.B. Para
Aboni Thakur Sarani,
Siliguri - 734 004."

Herein, we would refer to the decision by the Hon'ble High Court of Himachal Pradesh at Shimla relied upon by the applicants, wherein the Hon'ble Court had held as follows:-

"Furthermore, given their long standing experience which is both an asset and an qualification vis-à-vis new entrants amplifying gives a vigorous force to their claim as stands reared hereat."

The Hon'ble Court was adjudicating on the issue of engagement of Field Investigators in NSSO in CWP No. 3274 of 2010 and CWP No. 3278

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of 2010 (***Shailendra Kishore v. Central Administrative Tribunal & ors.***). Admittedly, the applicants herein have long experience which is not disputed by the respondent authorities. Accordingly, the experience of the applicants ought to be reckoned with favourably while considering their reengagement as Field Investigators.

7.3. We were given to understand during hearing that while the applicants were allowed to continue till the 74th round of the survey, presently the 78th round of the survey is in progress. Respondents also admit at hearing that such Field Investigators, who had registered with the agency, were allowed to continue in subsequent rounds, subject to actual requirements and also that different outsourced agencies have been engaged in successive rounds of surveys.

Accordingly, we would direct the respondent authorities to ensure that, given the past experience and eligibility of the applicants, and, subject to the applicants' registration with the service provider, the applicants' experience should be considered in reengaging them in the forthcoming rounds of the survey. We would further hold that, in the light of the ratio of the Hon'ble High Court of Himachal Pradesh, in ***Shailendra Kishore (supra)***, the applicants, by virtue of their long experience, should receive priority in continuity in such surveys vis-à-vis new claimants.

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7.4. Ld. Counsel for the respondents would submit that, as the recruitment rules of the JSO are already in place, there is no further scope of notifying further recruitment rules for JSOs.

Admittedly, however, vacancies remain on grounds of attrition, promotion and exigencies and this is fortified by the submissions of the Ld. Counsel for the applicants, who would draw our attention to an response to an RTI query dated 22.8.2019, whereby it is seen that Field Investigators are continuing by virtue of orders of orders of various courts of law and the applicants have also averred in their M.A. No. 674 of 2017, that there are about 58 number of vacancies in the West Bengal Region itself against the all India vacancy of 1400. Respondents would also contend that 130 JSOs and 35 Field Investigators are involved in the current round of survey.

Therefore, we would direct that whenever the respondent authorities notify the vacancies of JSOs, the present applicants should be given an opportunity to participate in such selection process with the scope of age relaxation in case such proviso exists in the extant recruitment rules.

7.5. We also make it clear that in case the applicants are engaged through the agency, subject to their registration thereof and availability of vacancies, they should not be replaced by another set of Field Investigators subject to their satisfactory work performance.

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7.6. Both Ld. Counsel have furnished judicial pronouncements in support.

While the respondent authorities would rely on the orders of this Tribunal in Bangalore Bench dated 16.8.2017 in O.A. No. 170/00401 to 00406/2016 (**Sri Dharshan B. & 5 ors. v. the UOI**) in which the Tribunal, while discussing the decision of the Principal Bench in O.A. No. 1405/2011 and O.A. No. 1274/2011 as well as that of the Mumbai Bench, relied on the sanctity of GFR, 2017, and, held as follows:-



"..... the applicant who had been engaged as Field Investigators on contractual basis cannot demand that they shall have to be continued on provisional engagement basis indefinitely. When a person's service is terminated upon expiry of contract there is no scope for any direction for any continuation or regularization. Therefore we do not find any merit in the argument of the applicants that their provisional appointment should be continued."

Per contra, Ld. Counsel for the applicant would cite the decisions of the Chandigarh Bench in T.A. 062/00006/2014 (**Fayaz Ahmad Makhdoomi & ors. v. Union of India & ors.**) decided on 20.5.2015 whereby the Tribunal held that as survey work is a continuing activity, they should not be replaced pending regular appointment by the respondents.

The same decision was reiterated while disposing of SWP No. 96 of 2013 (**Fayaz Ahmad Makhdoomi & ors. v. Union of India & ors.**) by the Chandigarh Bench. Upon a detailed perusal, it is deciphered that the Chandigarh Bench was not in a position to discuss the provisions of GFR, 2017 which was introduced subsequent to its orders dated 20.5.2015, and, accordingly, the Court directed that one set of

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contractual employees should not be replaced by another set of contractual employees when they have been directly engaged by the respondents.

In **CWP No. 3274 of 2010 (Shailendra Kishore v. Central Administrative Tribunal & ors.)**, the Hon'ble High Court at Himachal Pradesh (supra) was seized with the question of regularization of contractual appointees. In the instant Original Application, the applicants have not sought regularization but only their continuity as Field Investigators.



Further, both the Chandigarh Bench as well as the Calcutta Bench in O.A. No. 383 of 2016 (**Biplab Deb Adhikary & ors. v. Union of India & ors. (NSSO)**), had clearly mandated that such contractual appointment would continue till the appointment of regular incumbents and regularization was not an issue in any of the judicial decisions.

The Hon'ble High Court of Rajasthan on 2.1.2014 while disposing Writ Petition No. 13226/2013 (**Radha Mohan & ors. v. Union of India & ors.**) also directed the respondents to continue the applicants in their respective posts of Field Investigators. We note with due respect that such orders also emanated prior to introduction of amended GFR, 2017.

Ld. Counsel for the applicant would also rely on the orders of the Hon'ble High Court at Karnataka in Writ Petition No. 207385/2015 (S-CAT) (**Dheeru Nayak v. Union of India & ors.**) wherein the Hon'ble Court, while referring to the ratio in **State Of Haryana And Ors. vs. Piara Singh And Ors.** in 1992 AIR 2130 and **Secretary, State of**

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Karnataka & ors. vs. Uma devi And Ors. in (2006) 4 SCC 1

directed regularization of services of the petitioner. It is reiterated that regularization of service is not the cause of action in the instant matter.


Ld. Counsel for the applicants would also rely on the decisions of the Hon'ble High Court of Jammu & Kashmir in SWP No. 632 of 2017 as well as the Central Administrative Tribunal in the Mumbai Bench in SWP. 636 of 2017 (**Rouf Ahmad Sheikh v. Union of India & ors.**) and Original Application No. 422 of 2017 (**S.V. Kanche & 17 ors. v. D/o. Statistics & Programme & 04 ors.**) respectively to drive home the point that such judicial fora had also directed that the position of the petitioners as Field Investigators should not be disturbed.

7.7. Ld. Counsel for the applicant has also filed a CPC bearing No. 75 of 2017 alleging violation of interim orders dated 13.4.2017 wherein this Tribunal, sitting singly, had directed that status quo as on date as far as continuance of the applicants in the post is concerned be maintained till next date. While, Ld. Counsel for the respondents would agitate that the consequent orders did not continue the interim relief, Ld. Counsel for the applicant would vociferously agitate that such interim relief continues till date. Ld. Counsel for the applicant would also expostulate vigorously that despite such status quo orders, the petitioners were relieved from their jobs thereby violating interim orders of the Tribunal. Ld. Counsel for the respondents would take refuge in their argument that, as the ongoing round of NSS (that was in progress during grant of the status

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quo orders) came to an end, the applicants' engagement automatically expired with the end of the contractual tenure. Further, no conscious action was taken to terminate such on going engagement during the pendency of the on-going round of survey.

The respondents had also filed M.A. No. 674 of 2017 on 31.7.2017 praying for vacation of such interim orders on the ground of closure of the ongoing round of survey.



Ld. Counsel for the respondents would also argue that although an agreement was signed with the service provider on 14.7.2017 for initiation of the 75th round of survey, the applicant/petitioner did not register with the service provider and, accordingly, as mandated by GFR, 2017, there was no scope of continuing the services of the applicants/petitioners in the subsequent round of survey by direct contractual arrangements.

We understand that once a survey comes to an end, the contractual Field Investigators will be required to be reengaged on a fresh contract which was admittedly not the situation herein. By virtue of their policy decision dated 19.6.2017, the authorities, however, decided to continue with contractual field workers as there was little time to comply with provisions of GFR 2017, and, hence, the applicants ought to have been continued in the 75th round.

Hence, in terms of Rule 8 of Contempt of Court (CAT) Rules, 1992, we would direct that the respondent authorities to show cause as to why

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they would not be liable to pay the applicants emoluments for this interim period during which there is an established violation of this Tribunal's orders despite policy decisions in support.

7.8. Regarding the second issue on entitlement to pay as per the ratio of **Jagjit Singh (supra)**, the respondent authorities would argue that such judgment was not in rem and, accordingly, not applicable to the applicants unless squarely covered by the ratio of **Jagjit Singh (supra)**.

We find in **Jagjit Singh (supra)**, the Hon'ble Court has held as follow


(with supplied emphasis):-



"57. Having traversed the legal parameters with reference to the application of the principle of 'equal pay for equal work', in relation to temporary employees (daily-wage employees, ad-hoc appointees, employees appointed on casual basis, contractual employees and the like), the sole factor that requires our determination is, whether the concerned employees (before this Court), were rendering similar duties and responsibilities, as were being discharged by regular employees, holding the same/corresponding posts. This exercise would require the application of the parameters of the principle of 'equal pay for equal work' summarized by us in paragraph 42 above. However, insofar as the instant aspect of the matter is concerned, it is not difficult for us to record the factual position. We say so, because it was fairly acknowledged by the learned counsel representing the State of Punjab, that all the temporary employees in the present bunch of appeals, were appointed against posts which were also available in the regular cadre/establishment. It was also accepted, that during the course of their employment, the concerned temporary employees were being randomly deputed to discharge duties and responsibilities, which at some point in time, were assigned to regular employees. Likewise, regular employees holding substantive posts, were also posted to discharge the same work, which was assigned to temporary employees, from time to time. There is, therefore, no room for any doubt, that the duties and responsibilities discharged by the temporary employees in the present set of appeals, were the same as were being discharged by regular employees. It is not the case of the appellants, that the respondent-employees did not possess the qualifications prescribed for appointment on regular basis. Furthermore, it is not the case of the State, that any of the temporary employees would not be entitled to pay parity, on any of the principles summarized by us in paragraph 42 hereinabove. There can be no doubt, that the principle of 'equal pay for equal work' would be applicable to all the concerned temporary employees, so as to vest in them the right to claim wages, at par with the minimum of the pay-scale of regularly engaged Government employees, holding the same post.

58. In view of the position expressed by us in the foregoing paragraph, we have no hesitation in holding, that all the concerned temporary employees, in the present bunch of cases, would be entitled to draw wages at the minimum of the pay scale (at the lowest grade, in the regular (pay-scale), extended to regular employees, holding the same post."

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While adjudicating **Jagjit Singh (supra)**, the Hon'ble Supreme Court has decided on the basis of principle of 'equal pay for equal work' holding thereby that the sole factor for determination is whether the petitioners before the Court were rendering similar duties and responsibilities as being discharged by regular employees holding the corresponding posts. As the respondent authorities had admitted that the Field Investigators are deployed as a stop gap arrangement to tide over intermittent vacancies of the regular JSO, the logical corollary is that the contractual Field Investigators are entrusted to perform similar duties and responsibilities as regular JSOs. The respondents have not controverted such claim and hence the ratio of **Jagjit Singh (supra)** would apply to the present applicants upon satisfaction of the dicta of "equal pay for equal work".

7.9. Before parting, we would, however, refer to the ratio held by the Hon'ble High Court in **Commissioner, Kendriya Vidyalaya Sangathan v. Anil Kumar Singh, (2003) 10 SCC 284** whereby it was held that where appointment is given on a contractual basis, it may be permissible to allow such appointees to continue after the expiry of the contractual period till the posts are filled up by process of regular appointment and also to allow such appointees to compete with others if they are not otherwise disqualified.

Although, regularization is not the cause of action of this O.A., we would like to add that the right to regularization of a person appointed

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on a purely contractual basis would depend on the express and/or on the implied terms of contract and the ratio of ***Uma Devi (3) 2006 (4) SCC***

1. The agreement executed by the applicants with the authorities would bear testimony on the terms of conditions of such contractual agreements.

To sum up, we would direct as follows:-

- 1) E notice dated 4.11.2016 calling for bids to engage an agency to hire manpower on contractual basis is not liable to judicial intervention, as the same had been issued in compliance to provisions of GFR, 2017. Such provisions, admittedly, are not under challenge.
- 2) In case the applicants register with the agency engaged to hire contractual manpower, given the long experience of the applicants, the respondents shall engage them through such agency in forthcoming rounds, subject to actual requirement of contractual field investigators.
- 3) Once so engaged through such agency, the applicants may be continued, subject to actual requirements, eligibility and their satisfactory performance.
- 4) The ratio of ***Jagjit Singh (supra)*** will apply to the applicants if they are squarely covered by the dictum of "equal pay for equal work" vis-à-vis the regular JSOs.

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- 5) Upon the event of notification of vacancies for JSOs, the applicants may be given opportunity to participate, subject to scope of age relaxation, if any, in the extant recruitment rules.
- 6) The respondents are to show cause as to why they would not be liable to pay each applicant to this O.A. emoluments for the 75th round (if not paid earlier) as, admittedly, Field Investigators were engaged without recourse to Rule 198 of GFR, 2017, as per their own policy decision admitted by respondents in their notes dated 19.6.2017 (at page 31 of reply to CPC).



8. With these directions, the O.A. is disposed of. M.A.s No. 337 of 2017 & 674 of 2017 praying for interim relief and vacation of interim relief dated 13.4.2017 are disposed of accordingly.
9. CPC be listed on 28.2.2020.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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